

HOUSE BILL 2634

By Jones S

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 37, to enact the "Tennessee Child Advocate for the Protection of Children Act of 2008."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Child Advocate for the Protection of Children Act of 2008."

SECTION 2.

In keeping with this act's purpose of assisting, protecting, and restoring the security of children whose well-being is threatened, it is the intent of the general assembly that the mission of protection of the children of this state should have the greatest legislative and executive priority. Recognizing that the needs of children must be attended to in a timely manner and that more aggressive action should be taken to protect children from abuse and neglect, the general assembly creates the office of the child advocate for the protection of children to provide independent oversight of persons, organizations, and agencies responsible for providing services to or caring for children who are victims of child abuse and neglect, or whose domestic situation requires intervention by the state. The office of the child advocate for the protection of children will provide children with an avenue through which to seek relief when their rights are violated by state officials and agents entrusted with their protection and care.

SECTION 3.

(a) As used in this act, unless the context otherwise requires:

(1) "Advocate" or "child advocate" means the child advocate for the protection of children established under this act;

(2) "Agency" means:

(A) Every state department, agency, board, bureau, commission, public corporation, and authority;

(B) Every county, municipal corporation, school district, or other political subdivision of this state;

(C) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;

(D) Every city, county, regional, or other authority established pursuant to the laws of this state; and

(E) Every organization that contracts with any of the entities set out in (A) – (D) of this subdivision to provide services to children; provided, however, this subdivision (E) shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type of organization furnishing medical or health services to a child.

(3) "Child" or "children" means an individual receiving protective services from the department, for whom the department has an open case file, or who has been, or whose siblings, parents, or other caretakers have been the subject of a report to the department within the previous five (5) years.

(4) "Department" means the department of children's services.

#### SECTION 4.

(a) There is created the office of the child advocate for the protection of children. The governor shall create a nominating committee which shall consider nominees for the position of the advocate and shall make a recommendation to the governor. Such person shall have knowledge of the child welfare system, the juvenile justice system,

and the legal system and shall be qualified by training and experience to perform the duties of the office as set forth in this chapter.

(b) The advocate shall be appointed by the governor from a list of at least three (3) names submitted by the nominating committee for a term of three (3) years. The salary of the advocate shall be fixed by the governor.

(c) The advocate may appoint such staff as may be deemed necessary to effectively fulfill the purposes of this act. The duties of the staff may include the duties and powers of the advocate if performed under the direction of the advocate. The advocate and the advocate's staff shall receive such reimbursement for travel and other expenses as is normally allowed to state employees.

(d) The advocate shall have the authority to contract with experts in fields, including but not limited to, medicine, psychology, education, child development, juvenile justice, mental health and child welfare, as needed to support the work of the advocate.

(e) Notwithstanding any other provision of law to the contrary, the advocate shall act independently of any state official, department, or agency in the performance of the advocate's duties.

## SECTION 5.

The advocate shall perform the following duties:

(1) Identify, receive, investigate, and seek the resolution or referral of complaints made by or on behalf of children concerning any act, failure to act, omission to act, practice, policy, or procedure of an agency or any contractor or agent thereof that may adversely affect the health, safety, or welfare of the children;

(2) Refer complaints involving abused children to appropriate regulatory and law enforcement agencies;

(3) Provide periodic reports on the work of the office of the child advocate for the protection of children, including but not limited to, by January 15 of each year provide a report to the judiciary committees of the senate and the house of representatives, the children and family affairs committee of the house of representatives and the select committee on children and youth. Such reports shall include recommendations for changes in policies and procedures to improve the health, safety, and welfare of children and shall be made expeditiously in order to timely influence public policy;

(4) Establish policies and procedures necessary for the office of the child advocate for the protection of children to accomplish the purposes of this act, including but not limited to, providing the department with a form of notice of availability of the office of the child advocate for the protection of children. Such notice shall be posted prominently, by the department, in department offices and in facilities receiving public moneys for the care and placement of children and shall include information describing the office of the child advocate for the protection of children and procedures for contacting that office; and

(5) Convene quarterly meetings with organizations, agencies, and individuals who work in the area of child protection to seek opportunities to collaborate and improve the status of children in Tennessee.

## SECTION 6.

The advocate shall have the following rights and powers:

(1) To communicate privately, by mail or orally, with any child and with each child's parent or guardian;

(2) To have access notwithstanding any provision of law to the contrary to all records and files of the department concerning or relating to a child, and to

have access, including the right to inspect, copy, and subpoena records held by clerks of the various courts, law enforcement agencies, service providers, including medical and mental health, and institutions, public or private, with whom a particular child has been either voluntarily or otherwise placed for care or from whom the child has received treatment within the state. To the extent any such information provides the names and addresses of individuals who are the subject of any confidential proceeding or statutory confidentiality provision, such names and addresses or related information which has the effect of identifying such individuals shall not be released to the public without the consent of such individuals;

(3) To enter and inspect notwithstanding any provision of law to the contrary any and all institutions, facilities, and residences, public and private, where a child has been placed by a court or the department and is currently residing. Upon entering such a place, the advocate shall notify the administrator or, in the absence of the administrator, the person in charge of the facility, before speaking to any children. After notifying the administrator or the person in charge of the facility, the advocate may communicate privately and confidentially with children in the facility, individually or in groups, or the advocate may inspect the facility. To the extent possible, entry and investigation provided by this act shall be conducted in a manner which will not significantly disrupt the provision of services to children;

(4) To apply to the governor to bring legal action in the nature of a writ of mandamus or application for injunction to require an agency to take or refrain from taking any action required or prohibited by law involving the protection of children;

(5) To apply for and accept grants, gifts, and bequests of funds from other states, federal and interstate agencies, independent authorities, private firms, individuals, and foundations for the purpose of carrying out the lawful responsibilities of the office of the child advocate for the protection of children;

(6) When less formal means of resolution do not achieve appropriate results, to pursue remedies provided by this act on behalf of children for the purpose of effectively carrying out the provisions of this act; and

(7) To engage in programs of public education and legislative advocacy concerning the needs of children requiring the intervention, protection, and supervision of courts and state and county agencies.

#### SECTION 7.

(a) No person shall discriminate or retaliate in any manner against any child, parent or guardian of a child, employee of a facility, agency, institution or other type of provider, or any other person because of the making of a complaint or providing of information in good faith to the advocate, or willfully interfere with the advocate in the performance of the advocate's official duties.

(b) Any person violating subsection (a) of this section shall be guilty of a Class B misdemeanor.

#### SECTION 8.

The advocate shall be authorized to request an investigation by the Tennessee bureau of investigation of any complaint of criminal misconduct involving a child.

#### SECTION 9.

(a) There is established a child advocate advisory committee. The advisory committee shall consist of:

(1) One (1) representative of a not for profit children's agency appointed by the governor;

(2) One (1) representative of a for profit children's agency appointed by the speaker of the senate;

(3) One (1) pediatrician appointed by the speaker of the house of representatives;

(4) One (1) social worker with experience and knowledge of child protective services who is not employed by the state appointed by the governor;

(5) One (1) psychologist appointed by the speaker of the senate;

(6) One (1) attorney appointed by the speaker of the house of representatives; and

(7) One (1) juvenile court judge appointed by the chief justice of the supreme court of Tennessee.

(b) The advisory committee shall meet a minimum of three (3) times a year with the advocate and the advocate's staff to review and assess the following:

(1) Patterns of treatment and service for children;

(2) Policy implications; and

(3) Necessary systemic improvements.

(c) The governor shall appoint one (1) member of the advisory committee to serve as chair for a term of three (3) years and shall appoint a chair every three (3) years thereafter.

(d) Each regular appointment to the advisory committee shall be for a term of three (3) years and every appointee shall serve until a successor has been appointed and has qualified. No member of the advisory committee may be appointed to serve more than three (3) consecutive three-year terms. Any vacancy occurring on the

advisory committee shall be filled by appointment by the original appointing authority only for the remainder of the unexpired term. Following any member's three (3) successive absences from advisory committee meetings, the chair may request the governor to declare a vacancy and to fill the unexpired term.

(e) Members of the advisory committee shall receive no compensation for their services, but shall be reimbursed for travel and other expenses actually incurred in the performance of their official duties. Such reimbursement shall be paid in accordance with the provisions of the comprehensive out-of-state travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

SECTION 10. Tennessee Code Annotated, Title 37 is amended by adding Sections 1 through 9 as a new chapter.

SECTION 11. Tennessee Code Annotated, Section 37-5-107(a), is amended by deleting the last sentence and substituting instead the following:

The department shall release to the Tennessee office of the child advocate for the protection of children any and all records requested by the office that the office believes necessary to perform its duties and responsibilities pursuant to the Tennessee child advocate for the protection of children act. Any person or entity, including the commission, who is provided access to records under this provision shall be required to maintain such records in accordance with state and federal laws and regulations regarding confidentiality.

SECTION 12. Tennessee Code Annotated, Section 37-1-612(c), is amended by adding the following language as an appropriately designated subdivision:

( ) The Tennessee office of the child advocate for the protection of children any and all records requested by the office that the office believes necessary to perform its



duties and responsibilities pursuant to the Tennessee child advocate for the protection of children act.

SECTION 13. Tennessee Code Annotated, Section 4-29-231(a), is amended by adding the following new items thereto:

( ) Office of the child advocate for the protection of children, created by Section 4 of this act;

( ) Child advocate advisory committee, created by Section 9 of this act;

SECTION 14. This act shall take effect upon becoming a law, the public welfare requiring it.